



Arbitration CAS 2014/A/3461 Bologna FC 1909 S.p.a. v. CA River Plate, award of 2 September 2015

Panel: Mr Mark Hovell (United Kingdom), Sole Arbitrator

Football

Loan agreement and sell-on fee

Scope of review of a CAS panel

Compensation for transfer and sell-on fee

1. **Notwithstanding a CAS panel's full power of review, it is not possible to deal with matters that were in the domain of the FIFA DRC, if the appeal is directed against a decision rendered by the FIFA PSC.**
2. **It is not uncommon for a selling club to want a certain price for a player, but to accept less initially, and a share of more, if the player turns out to be a success at the buying club and becomes a target for a third club. The wording of the FIFA Regulations is wide enough to cover all payments, whether up front or later ones.**

I. PARTIES

1. Bologna FC 1909 S.p.a ("Bologna" or the "Appellant") is a football club with its registered office in Bologna, Italy. The Appellant is registered with the Federazione Italiana Giuoco Calcio (FIGC), which in turn is affiliated to the Fédération Internationale de Football Association (FIFA).
2. Club Atlético River Plate ("River Plate" or the "Respondent") is a football club with its registered office in Montevideo, Uruguay. The Respondent is registered with the Asociación Uruguaya de Fútbol (AUF) which in turn is also affiliated to FIFA.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.

4. On 29 August 2009, River Plate and Bologna signed a loan transfer agreement for the transfer of H. (“the Player”) from River Plate to Bologna with an option to purchase the services of the Player on a permanent basis for the amount of EUR 2,400,000 (the “Loan Agreement”).

5. Clause 3.1 of the Loan Agreement provided:

“Without prejudice to the provisions of art. 2 and sub-paragraphs, River grants Bologna, which accepts, an exclusive right of option to apply the right to use the sports services of the footballer on a definitive basis as and from 1 July 2010.

a) *The right of option shall be exercised by Bologna by 31 August 2010 at the latest by Bologna providing River with written notice in this sense. In case of exercising the right of option, Bologna shall pay River the total amount of 2,400,000.00 euro for the definitive transfer of the footballer. Such total amount shall be paid by Bologna to River on the expiry dates and according to the procedures to be agreed between the parties by means of bank transfers onto the account in the name of River, which the latter shall indicate to Bologna in writing”.*

6. Clause 4.6 of the Loan Agreement provided:

“In the event of Bologna exercising the option and in the event of the future definitive transfer of the footballer by Bologna, Bologna shall grant River 30% of the amount actually received by Bologna for the definitive transfer. In the event of payment by instalments, Bologna shall pay River 30% of each instalment upon this being actually received”.

7. Bologna exercised its option to acquire the Player and on 9 October 2009, the parties signed a transfer agreement (“the First Transfer Agreement”). The First Transfer Agreement provided:

“[...] further to the agreements between the above and in relation to the exercising of the right of option by Bologna of the right of option as indicated in article 3.2 of the transfer contract of the professional footballer H. (13/03/1986) signed on 29/08/2009, as per verbal agreements, the parties agree the following payment expiry dates in the amount of 2,400,000.00 euro (two million four hundred thousand /00) all inclusive for the definitive transfer of the above footballer.

Such amount shall be paid by Bologna to River on the following expiry dates:

a) *400,000.00 euro on 31 July 2010; and*

b) *1,000,000.00 euro on 31 October 2010; and*

c) *1,000,000.00 euro on 31 October 2011.*

said amounts shall be paid by Bologna to River by bank transfers onto the current account in the name of River to be indicated by the latter to Bologna in written form”.

8. On 30 July 2010, Bologna paid River Plate EUR 380,000 in relation to the first instalment of EUR 400,000 (minus the 5% solidarity contribution).

9. On 6 September 2010, Bologna and River Plate reached a further agreement by which River Plate sold Bologna the 50% of its share of any fee in relation to the future transfer of the Player (i.e. 30% as provided by clause 4.6 of the Loan Agreement) for EUR 1,000,000 (the “Second Transfer Agreement”). The payment was to be made by way of EUR 500,000 in November 2010 and EUR 500,000 in February 2011.
10. On 29 March 2011, the parties reached a further agreement for the payment of the outstanding amount due for the transfer of the Player (the “Third Transfer Agreement”). The Third Transfer Agreement provided:

“With reference to your credit concerning the transfer of the above player, please be informed that we are going to pay the amount of 3,000,000.00 (three million) euro on the following dates:

- *30/04/2011 1,000,000 (one million) euro*
- *31/05/2011 1,000,000 (one million) euro*
- *31/10/2011 1,000,000 (one million) euro*

This solution was agreed upon between Francisco Casal and Daniel Delgado”.

Proceedings before the Single Judge of the FIFA Players’ Status Committee

11. On 15 July 2011, River Plate lodged a claim against Bologna with FIFA requesting the payment of EUR 3,000,000 plus interest and costs.
12. On 31 October 2011, Bologna paid River Plate EUR 475,000 (being EUR 500,000 minus the solidarity contribution).
13. On 30 November 2011, Bologna wrote to River Plate setting out a new payment proposal that it had allegedly verbally agreed with it. This proposed payments of EUR 500,000 on 15 December 2011, EUR 500,000 on 28 February 2012, EUR 500,000 on 30 April 2012 and EUR 1,000,000 on a date to be confirmed at a later date.
14. On 15 December 2011, Bologna paid River Plate a further EUR 475,000 (being EUR 500,000 minus the solidarity payment).
15. On 18 December 2011, River Plate wrote to FIFA denying that any agreement had been concluded on 30 November 2011.
16. On 28 August 2013, the Single Judge of the FIFA Players’ Status Committee (the “FIFA PSC”) held (the “Appealed Decision”):

“1. The claim of the Claimant, Atlético River Plate, is partially accepted.

2. *The Respondent, Bologna FC 1909, has to pay to the Claimant, Atlético River Plate, the amount of EUR 1,948,080, **within 30 days** as from the date of notification of this decision.*
3. *If the aforementioned sum is not paid within the aforementioned deadline, the interest rate of 5% per year will apply as of expiry of the fixed time limit and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
4. *Any further claims lodged by the Claimant, Atlético River Plate, are rejected.*
5. *The final costs of the proceedings in the amount of CHF 15,000 are to be paid **within 30 days** as from the date of notification of the present decision, as follows:*
 - 5.1 *The amount of CHF 3,000 has to be paid by the Claimant, Atlético River Plate. Given that the latter already paid an advance of costs in the amount of CHF 5,000 at the start of the present proceedings, the Claimant is exempted from paying the above mentioned costs of the proceedings.*
 - 5.2 *The amount of CHF 10,000 has to be paid by the Respondent, Bologna FC 1909, to FIFA to the following bank account*
 - 5.3 *The amount of CHF 2,000 has to be paid by the Respondent, Bologna FC 1909, directly to the Claimant Atlético River Plate.*
6. *The Claimant, Atlético River Plate, is directed to inform the Respondent, Bologna FC 1909, directly and immediately of the account number to which the remittance under points 2 and 5.3 above is to be made and to notify the Players' Status Committee of every payment received".*
17. On 13 December 2013, the Appealed Decision was notified to the parties.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 3 January 2014, Bologna filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"). In this submission Bologna requested the appointment of a sole arbitrator. Bologna made the following requests for relief:

"to acknowledge the competence of CAS to decide the present appeal;

- on the merit:

- a. *in first request, to accept the present appeal, to revoke and to annul the appealed decision of the F.I.F.A. Single Judge of the Players' Status Committee and, as a consequence, to refer back the case to a previous instance;*
- b. *in subsidiary request, to revoke and to annul the appealed decision of the F.I.F.A. Single Judge of the Players' Status Committee and to decide ex novo the matter;*

- *in any case, to condemn Club Atletico River Plate to pay all cost of the present proceeding as well as the legal costs and fees, with the reimbursement of the amount paid by Bologna FC 1909 S.p.a. in the present dispute”.*
19. On 9 January 2014, Bologna wrote to the CAS Court Office regarding its request for an extension of the deadline to file the Appeal Brief.
 20. On 10 January 2014, the CAS Court Office acknowledge receipt of the Statement of Appeal. The CAS Court Office noted Bologna’s request for an extension of its time limit for the submission of the Appeal Brief by twenty days. River Plate was invited, within four days of receipt of the correspondence, to respond to Bologna’s request. In light of the request and the imminent expiry of the time limit for submitting the Appeal Brief it was suspended until further notice.
 21. On 18 January 2014, River Plate wrote to the CAS stating that Bologna’s request for an extension to file its Appeal Brief should be denied. Further, River Plate requested that the matter be dealt with by three arbitrators.
 22. On 29 January 2014, Bologna wrote to the CAS Court Office in relation to its request for an extension to file its Appeal Brief.
 23. On 31 January 2014, the CAS Court Office acknowledged receipt of Bologna’s letter and confirmed that the Division President decided to partially grant Bologna’s request by extending its time limit for filing the Appeal Brief by five days. Further, the CAS Court Office lifted the suspension of the time limit to file the Appeal Brief with immediate effect.
 24. On 31 January 2014, Bologna requested a specific deadline to file the Appeal Brief.
 25. On 3 February 2014, the CAS Court Office advised Bologna that it was not for the CAS Court Office to calculate the duration of time limits or confirm a specific date as the end of a given time limit.
 26. On 5 February 2014, River Plate wrote to the CAS Court Office regarding the decision to grant Bologna an extension of time of five days to file its Appeal Brief and requested that the extension be revoked.
 27. On 7 February 2014, the CAS Court Office confirmed that decisions on the request for the extension of a time limit by the President of the CAS Appeals Arbitration Division or his deputy are rendered without reasons and cannot be appealed. It was confirmed that River Plate’s request to revoke the granted extension was *per se*, inadmissible.
 28. On 7 February 2014, Bologna filed its Appeal Brief, in accordance with Article R51 of the CAS Code. Bologna challenged the Appealed Decision, submitting the following amended requests for relief:

“1. *To acknowledge the competence of CAS to decide the present appeal;*

2. *On the merit, to accept the present appeal and:*
 - *in first request, to revoke and to annul the appealed decision of the F.I.F.A. Single Judge of the Players' Status Committee passed in Zurich, Switzerland, on 28 August 2013, notified by facsimile to the Appellant on 13 December 2013 and, as consequence, to refer back the case to the previous instance;*
 - *in a subsidiary request, to revoke and to annul the appealed decision of the F.I.F.A. Single Judge of the Players' Status Committee and to decide ex novo the matter related only to the object of the appealed decision, i.e. the outstanding transfer fee;*
3. *in any case, to condemn Club Atletico River Plate to pay all cost of the present proceeding as well as the legal costs and fees, with reimbursement of the amount paid by Bologna FC 1909 S.p.a. in the present dispute”.*
29. On 10 February 2014, the CAS Court Office acknowledged receipt of the Appeal Brief and requested that River Plate submit its Answer within twenty days of receipt of the letter by courier.
30. On 11 February 2014, River Plate wrote to the CAS Court Office submitting that the Appeal Brief was filed late and therefore should be rejected.
31. On 12 February 2014, the CAS Court Office acknowledged receipt of River Plate's letter and advised that it was for the Panel, once constituted, to decide on River Plate's request to reject the Appeal Brief for being filed late.
32. On 17 February 2014, River Plate requested that the President of the Division proceed, before expiry of the deadline to file its Answer, to reject the Appeal Brief for being filed late.
33. On 18 February 2014, the CAS Court Office acknowledge receipt of River Plate's letter and confirmed that the timely filing of the Appeal Brief did not fall within the powers of the Division President. Therefore, it was for the Panel or a Sole Arbitrator, once appointed, to decide on the timely filing of the Appeal Brief.
34. On 27 February 2014, River Plate filed its Answer, in accordance with Article R55 of the CAS Code, with the following requests for relief:
 - “1) *The answer to the appeal is deemed to have been submitted in due time and form.*
 - 2) *Firstly, it is requested that when the Panel is created, it proceeds immediately to treat what was developed in the Chapter II, and more specifically the issue of the late submission of the substantiation of the remedy of appeal by the appellant, and necessarily orders the rejection of the appeal, with condemnation in judicial costs and expense for the losing party.*
 - 3) *For the very unlikely event that what is asked in the previous point was not accepted, it is requested that based on any of the legal foundations in chapter III, it proceeds in due time to reject the appeal, remaining firm the Decision of FIFA, with specified imposition of the judicial costs and expenses”.*

35. On 4 March 2014, the CAS Court Office acknowledged receipt of River Plate's Answer and asked the parties to confirm, by 11 March 2014, whether they wished for a hearing to take place.
36. On 6 March 2014, River Plate confirmed that its preference was for the case to be decided by a sole arbitrator based solely on the parties written submissions.
37. On 11 March 2014, Bologna confirmed that it wished for a hearing to be held.
38. On 17 March 2014, the CAS Court office confirmed that the President of the CAS Appeals Arbitration Division had decided that the proceedings should be conducted by a sole arbitrator in accordance with Article R50 of the CAS Code.
39. On 11 April 2014, the CAS Court Office informed the parties that, pursuant to Article 54 of the CAS Code, Mark A. Hovell, solicitor from Manchester, England, had been appointed as the Sole Arbitrator in this matter.
40. On 20 May 2014, the CAS Court Office, on behalf of the Sole Arbitrator, issued the following directions and orders:
 1. *As the parties may note from my enclosed letter of today, the CAS Court office has requested FIFA to provide the underlying case file to be added to the present proceedings.*
 2. *The parties will further note from this letter that FIFA has been invited to file an Amicus-Brief in accordance with Article R.41.4 of the Code of Sports-related Arbitration (the "Code") without prejudice to the Sole Arbitrator's findings and decision on the merits.*
 3. *The Sole Arbitrator has taken due note of the Appellant's preference for a hearing opposed to the Respondent's preference to decide the matter on the basis the parties written submissions. The parties have advised in this respect that the Sole Arbitrator intends to invite the parties, upon receipt of FIFA's filings in accordance with points 1 and 2 above, to a second round of submissions. Thereafter, the Sole Arbitrator shall decide whether a hearing is necessary in view of all circumstances of the case, including in particular the amount in dispute.*
 4. *The Appellant is requested to produce, **within fourteen (14) days of receipt** of this letter, a certified English translation of the annexes 5, 6, 7 and 8 to its appeal brief.*
 5. *In response to the Respondent's request to preliminary rule on the timely filing and admissibility of the appeal brief, the Sole Arbitrator holds that the appeal brief has been filed in a timely manner and is thus admissible pursuant to Article R. 51 of the Code. The Sole Arbitrator wishes to emphasize in this respect that the time limits for filing the appeal brief ended indeed on 7 February 2014 (and not on 4 or 5 February 2014) due to the fact that the time limit was extended by five days while an additional three days of the Appellant's time limit were still remaining when it was suspended on 10 January 2014 and resumed running on 31 January 2014. The full decision regarding the appeal's admissibility addressing also the Respondent's formal arguments related to the decision of the Deputy Division President of the CAS to extend the time limit of the appealed brief shall be delivered in the final Award".*

41. On 20 May 2014, the CAS Court Office, on behalf of the Sole Arbitrator, wrote to FIFA Requesting the case file. Further, the CAS Court Office invited FIFA to file an *Amicus Curiae* brief addressing, in particular, the following points:

- “1. *Competence of FIFA’s judiciary bodies with regard to solidarity contribution in general and in particular when the matter of solidarity contribution is raised incidentally in a matter for which the FIFA PSC is indeed competent.*
2. *The independency between the FIFA PSC and the FIFA DRC in general and in particular in the present FIFA proceedings ref. 11-02682 (DRC) and ref. 11-01586/mdo (PSC) and a possible estoppel in view of the principle of lis pendens.*
3. *The outcome, if any yet, of the FIFA proceedings ref. 11-02682 (DRC) allegedly related to the present CAS proceedings.*
4. *Who, in FIFA’s view and according to its judiciary bodies’ jurisprudence, is entitled to solidarity contribution and who is the distributor and/or recipient of solidarity contribution?*
5. *Any further deliberations which FIFA deems noteworthy or helpful in connection with points 1 - 4 above”.*

42. On 3 June 2014, Bologna provided the translations as requested by the CAS Court Office.

43. On 5 June 2014, FIFA responded to the CAS Court Office letter of 20 May 2014 received on 22 May 2014. FIFA provided the CAS Court Office with the FIFA case file. Further, FIFA responded to the queries raised by the Sole Arbitrator but explained that it did not consider the submission to be an *Amicus Curiae* brief but merely technical explanations. FIFA responded:

- “1/ *The jurisdiction to deal with claims about solidarity mechanism is established by art.22 lit. d) and e) of the Regulations on the Status and Transfer of Players. Furthermore, it is the constant practice of the Players’ Status Committee to apply the principle that solidarity contribution is to be deducted from any compensation paid by the new club to the former clubs subject to the new club being able to demonstrate that it has indeed paid the relevant contribution to training clubs; On this basis, only effective payments corroborated by the relevant documentary evidence are taken into account. Should there be a dispute between the new club and an alleged training club on the payment of the solidarity contribution, this matter would be dealt with in a separate procedure before the Dispute Resolution Chamber. In this respect, we note that point 14 of the considerations of the challenged decision might be misleading. In fact, the Single Judge did not reject any claim for solidarity contribution (he was not competent to do so) but rather disregarded the relevant amount since a dispute exists in relation thereto.*
- 2/ *The decision of the Player’s Status Committee with respect to the challenged decision did not yet take into account possible additional payments to be made by Bologna to training clubs with respect for solidarity contributions. This is in line with what was exposed in relation to question Nr 1.*
- 3/ *No decision has yet been taken in the matter.*

- 4/ *Entitled to solidarity contribution are all clubs that contributed to the training of a player between the ages of 12 and 23 (cf. art. 1 of Annexe 5 of the Regulations on the Status and Transfer of Players). These clubs are the recipients of solidarity contribution and the distributor is the new club (cf. again art 1 of annexe 5 of the Regulations on the Status and Transfer of Players). This principle is applied in a very strict manner: in fact, in case the new club omits to deduct the solidarity contribution from the agreed transfer compensation and pays 100% to the former club, according to the well-established jurisprudence of the Dispute Resolution Chamber, the new club will have to pay solidarity contribution to the training clubs and the former club had to refund the relevant amounts to the new club.*
- 5/ *For the sake of complete clarity, we may add that solidarity mechanism is only about the distribution of the agreed transfer compensation. If the new club has committed itself to pay for example USD 1,000,000, this is the amount that it will finally have to pay, i.e. according to the Regulations, 95% to the former club and 5% to training clubs. In case it would not have to distribute the entire 5%, the new club shall not get enriched by the solidarity mechanism and the former club will receive the respective higher amount”.*

44. On 12 June 2014, Bologna reiterated its request for a hearing to be held.

IV. THE HEARING

45. On 4 July 2014, the CAS Court office informed the parties that the Sole Arbitrator had determined to convene a hearing.
46. On 9 August 2014, Bologna filed a schedule showing what payments it had made to previous training clubs, including River Plate, with supporting receipts from those clubs' banks. River Plate, on 11 August 2014, objected to such late filing.
47. A hearing was held on 12 August 2014 at the CAS premises in Lausanne, Switzerland. The parties did not raise any objection as to the appointment of the Sole Arbitrator. The Sole Arbitrator was assisted by Mr. Christopher Singer, Counsel to CAS. The following persons attended the hearing:
- i. Appellant: Mr Grassani, Mr Carlutti and Mr Smacchia, all counsel;
 - ii. Respondent: Dr Bebekián and Dr Navía both counsel and both present by video conference.
48. The parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Sole Arbitrator. After the parties' final, closing submissions, the hearing was closed and the Sole Arbitrator reserved his detailed decision to this written award.
49. The Sole Arbitrator noted that the late filing of evidence by Bologna was due to the time it took to get receipts from the various banks, especially when some payments were a few years old. The Sole Arbitrator, in accordance with Article R56 of the CAS Code, was satisfied these were exceptional circumstances and allowed the late filing. The Sole Arbitrator additionally

allowed River Plate 7 days in which to make any representations on the alleged payments Bologna claimed to have made to River Plate. Subsequently, on 19 August 2014, River Plate confirmed it had received EUR 9,321 on 31 March 2011 and EUR 10,399 on 29 March 2012 from Bologna.

50. Upon closing the hearing, the parties expressly stated that they had no objections in relation to their right to be heard and that they had been treated equally in these arbitration proceedings. The Sole Arbitrator had carefully taken into account in his subsequent deliberation all the evidence and the arguments presented by the parties, both in their written submissions and at the hearing, even if they have not been summarised in the present award.

V. THE PARTIES' SUBMISSIONS

A. Appellant's Submissions

51. In summary, Bologna submits the following in support of its appeal:
52. Bologna noted that the single judge of the FIFA PSC, in the Appealed Decision, explained that should River Plate have deemed that it was entitled to claim solidarity contribution from Bologna, it should have lodged a claim in front of the FIFA Dispute Resolution Chamber (the "FIFA DRC") which was the competent body for such dispute. Therefore, the single judge acknowledged that he was incompetent to deal with such request and no issue on this regard can be disputed because River Plate never lodged an appeal against this part of the Appealed Decision. Therefore, the present dispute must concern only the outstanding transfer fee due to River Plate excluding every issue related to the solidarity contributions.
53. The FIFA PSC does not have the power and the competency to decide matters related to the solidarity contribution in accordance with Article 22 of the FIFA Regulations on the Status and Transfer of Players (2010 Edition) (the "FIFA Regulations").
54. Bologna noted that, in the Appealed Decision, the single judge referred to the "well established jurisprudence" of the FIFA DRC according to which if two parties conclude a transfer agreement for a specific amount as transfer compensation, solidarity contributions are considered to be included in the relevant transfer compensation. Furthermore, the jurisprudence also establishes the principle that if the parties wish to stipulate contrary to the aforementioned, i.e. solidarity contributions in addition to the agreed transfer compensation, they need to explicitly state it in the agreement. Therefore, the single judge recognised that the FIFA PSC was incompetent to decide matters relating to solidarity contribution, as a general rule solidary contribution has to be considered included in the transfer compensation unless the parties agree otherwise. Thus, the outstanding amount of the transfer fee of EUR 2,000,000 has to be considered inclusive of the solidarity contribution to be distributed to the entitled clubs. Therefore the sum of EUR 1,900.000, 95% of the amount of EUR 2,000,000, has to be considered as net transfer fee due to River Plate.

55. Bologna explained that it, as the new club of the Player, was responsible for deducting solidarity contribution and for the distribution to the training clubs in line with the FIFA Regulations.
56. The Appealed Decision saw the single judge of the FIFA PSC take into consideration disputes regarding the calculation and apportionment of the solidarity contribution that is not included in its competence, rather for the FIFA DRC to determine. Bologna argued that the single judge incorrectly took into account only the amounts which had at that time been paid as solidarity contribution to the training clubs and not the entire 5% as provided in the FIFA Regulations. The single judge took into account evidence from other proceedings before the FIFA DRC and deducted only those amounts from the total transfer fee. Bologna concluded that the single judge applied, in violation of the FIFA Regulations and without competence, a principle that does not exist neither in FIFA Regulations nor in FIFA's jurisprudence. The Appealed Decision assigned River Plate a share of transfer fee which does not belong to it, in that Bologna has to distribute to other former clubs of the Player. As such, Bologna argued that the Appealed Decision should be rendered a nullity by the Sole Arbitrator and that he should send the matter back to the FIFA PSC.
57. However and in the alternative, if the Sole Arbitrator decided not to send the matter back, then Bologna explained that the outstanding fee, as claimed by River Plate, was inclusive of any solidarity contribution. Bologna noted that the outstanding net transfer fee to River Plate totalled EUR 1,900,000.
58. The transfer compensation was not a net amount but was an all-inclusive amount from where it would have been calculated the net sum due to River Plate. Therefore, complying with Article 21 of annex 5 of the FIFA Regulations, the 5% of solidarity contribution, equal to EUR 150,000, must be deducted from the gross amount of EUR 3,000,000. Due to the payment of EUR 1,000,000 during the course of the FIFA proceedings (from which EUR 50,000 had been retained as solidarity contributions), the outstanding transfer fee due to River Plate is EUR 2,000,000 gross. The sum of EUR 100,000 (i.e. 5% of EUR 2,000,000) is the amount of the solidarity contribution calculated on the outstanding transfer fee that shall be shared amongst the Player's former clubs. Proceedings are before the FIFA DRC in relation to the solidarity contribution. Therefore, the issue of solidarity contribution, is reserved to the FIFA DRC and shall be decided by that competent body.
59. In case the Sole Arbitrator did determine to consider the solidarity contribution due to River Plate, Bologna submitted at the hearing that the Player was only trained by River Plate for 850 days (between 1 August 2006 and 31 July 2009) and would therefore be entitled to a maximum of 1.16% of the 5% solidarity payment (as opposed to the 1.18% it had acknowledged were due before FIFA). Further, Bologna relied upon the jurisprudence in CAS 2008/A/1751 to support its view that any share of the solidarity payment relating to the Player's 12th year of training and any gaps between training clubs thereafter, should go to the AUF. Bologna also referred to its late filing to confirm that it had already paid nearly EUR 90,000 to various training club (including just less than EUR 20,000 to River Plate) and to the AUF.

60. At the hearing, Bologna also sought to differentiate between the EUR 1m to be paid pursuant to the Second Transfer Agreement and the EUR 2.4m to be paid pursuant to the First Transfer Agreement. The former sum was buying out future rights and should not attract solidarity contributions, whereas the latter sum was the transfer fee for the Player and should have 5% deducted from it. As such, Bologna's position was that the transfer fee was EUR 2.4m.
61. In conclusion, Bologna submitted that the Appealed Decision should only have ruled upon the transfer fee due to River Plate and not on a matter outside of its competence. For this reason, the sums wrongly assigned to River Plate are sums actually owed to other clubs. Thus, it is completely illogical to allocate to one of the former clubs more than what is effectively due, as that amount of money belongs to a third club, and if the obligation to pay this third club is borne by the new club it would have to bear costs higher than those pursuant to FIFA Regulations.

B. Respondent's Submissions

62. In summary, River Plate submits the following in defence:
63. River Plate submitted that as a former club, it is also entitled to a share of the 5% solidarity contribution that has to be deducted in accordance with the FIFA Regulations. Further, that the former club can also benefit from any years in which the player was not trained by another club at all.
64. River Plate noted that it was the holder of 1.22% of the 5% solidarity payment. At the hearing, River Plate submitted that it trained the Player between 16 February 2007 to 1 July 2007 and between 10 August 2007 to 11 September 2009.
65. River Plate also noted that there was no training club from January 1998 to April 2000 and therefore another 0.58% should be added to its entitlement. River Plate submitted that, in total, it was the holder of 1.80% of the transfer price related to the payment of the solidarity mechanism.
66. The Appeal must be rejected because the deduction of 5% from the transfer fee, when there is 1.80% that is owed to River Plate, is legally absurd as River Plate is the true owner of that part of the money. Thus, River Plate concluded that Bologna did not have the right to require the full deduction of 5% when a proportion of that percentage was due to River Plate which, under no circumstances, could be discounted.
67. The Appealed Decision was correct in that the single judge stated that he could not deal with the issues relating to the solidarity mechanism that must be dealt with by the FIFA DRC. However, River Plate noted the "inconsistency" with the arguments of Bologna – it was making submissions on solidarity payments, yet it submitted the FIFA PSC and CAS could not deal with these issues. Further it was Bologna that asked the single judge to deduct what it had paid.

68. River Plate submitted that there was no legal support in relation to Bologna's submission that 5% had to be deducted from the transfer fee in relation to solidarity contributions. River Plate noted that Bologna had not provided evidence of any training club claiming any amounts in relation to solidarity before FIFA, and had only filed at the last minute evidence regarding alleged payments made to other clubs and to the AUF.
69. River Plate also noted that Bologna had deducted, at different times, amounts that exceeded the 5% as required by the FIFA Regulations.
70. River Plate, whilst accepting the total transfer should be EUR 3.4m, noted that Bologna had already effectively deducted 5% from the EUR 1.4m it had paid (i.e. EUR 70,000) and as a consequence of the Appealed Decision, was left with EUR 51,020 of the transfer fee. This aggregate amount is in excess of the remaining 3.2% of the transfer fee it needs to distribute via the solidarity mechanism. As such, there was never any need for the Appeal. It is just an attempt by Bologna to avoid paying the balance of monies it had owed to River Plate for many years. This shows bad faith by Bologna. If they had a genuine dispute it was never for more than 5% of the unpaid transfer fee, so Bologna could have and should have paid the 95% to River Plate.

VI. SCOPE

71. The Sole Arbitrator noted that as much as Bologna suggested at the hearing that CAS's role was to "find the truth", it also has submitted that the Sole Arbitrator could not deal with matters that were in the domain of the FIFA DRC, as this is an appeal from the FIFA PSC. Bologna relied upon the jurisprudence in CAS 2012/A/2707.
72. River Plate stated that it was Bologna that raised the issue of solidarity payments before the single judge of the FIFA PSC and that Bologna filed before the CAS details of actual solidarity payments made.
73. The Sole Arbitrator noted the position pursuant to the FIFA Regulations. Pursuant to Article 2.2 of Annex 5 of the FIFA Regulations there is a clear obligation upon the buying club to deduct from the sums it pays for the transfer of a player to the selling club, up to 5% of those sums. The reason the Sole Arbitrator states "up to" 5% is that there may be circumstances in which less than 5% is deductible. The Sole Arbitrator notes the example given in the FIFA Commentary on the FIFA Regulations:

"If a player who is younger than 23 transfers during the validity of his employment contract and a solidarity contribution is payable to his former training clubs, the total deduction from the transfer compensation will be less than 5%. For every year that the player is younger than 23, 0.5% shall be deducted from 5%".

Further, by analogy, if the Player only starts playing football during his 16th year, then the Sole Arbitrator would conclude that the 5% would be reduced each year by the relevant percentage attributed to each such year pursuant to Article 1 of Annex 5 of the FIFA Regulations. The buying club has the player's passport and the player to help trace his career, so is seen by

FIFA, as being in the best place to calculate and pay the solidarity contributions, on behalf of the selling club, to the clubs that have trained the player. If clubs cannot be found, then there is the ability to pass those monies to the football associations of the missing clubs. Further, it has been acknowledged by Bologna during the hearing that River Plate is entitled to at least 1.16% of the 5% (whilst River Plate claim 1.22%). The Sole Arbitrator sees no sense in the buying club deducting such sum attributable to the selling club from the selling club only to then pass the monies back to it. With the player's passport it may be within the competence of the FIFA PSC to calculate the percentage due to the selling club and to reduce the 5% accordingly. In so doing, the FIFA PSC would be utilising the FIFA Regulations, but not dealing with any disputes arising thereunder.

74. There may be disputes between such training clubs, for example: how long did they train the player for? Is the passport correct? Were there loans? Has a club gone bankrupt? Etc. The FIFA Regulations are clear, according to Article 24 of the FIFA Regulations, it is the FIFA DRC that will deal with such disputes.
75. The Sole Arbitrator notes that at present the FIFA DRC is charged with a number of disputes relating to the transfer of this Player and the calculation of solidarity contributions. These cases involve Bologna and at least 3 other clubs. The Sole Arbitrator notes that to delve into such ongoing matters is outside of his scope of jurisdiction.
76. The Sole Arbitrator notes that pursuant to Article R57 of the CAS Code, his scope is to review the Appealed Decision:

“The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance”.

As such, it is possible for the Sole Arbitrator to return the case to the FIFA PSC, if he agrees with Bologna, that the single judge of the FIFA PSC should not have taken information before the FIFA DRC and used it in when arriving at the Appealed Decision. Alternatively, the Sole Arbitrator has the power to annul the Appealed Decision and replace it with one of his own.

77. The Sole Arbitrator notes that Bologna has not sought to make any payment “on account” to River Plate and Bologna does not deny that it owes at least EUR 1.9m to River Plate (and has done so for quite some time). The Sole Arbitrator is confident that he has all he needs before him to produce his own decision and has determined to take his own decision rather than send the matter back to the FIFA PSC, but notes his scope is limited to confine him to matters that would fall into the domain of the FIFA PSC, so as to determine what part of the transfer fee remains due and what percentage of that sum should be retained by Bologna (over and above what it already holds) to distribute to other training clubs and the AUF in total, subject then to the ongoing dispute at the FIFA DRC, which will determine the exact division of the retained monies. Finally, the Sole Arbitrator shall determine whether any interest is due to River Plate and the responsibility for the fees and costs claimed by the parties.

VII. JURISDICTION OF THE CAS

78. Article R47 of the CAS Code provides as follows:

“An appeal against a decision of a federation, association or sports related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the Statutes or regulations of that body”.

79. The jurisdiction of the CAS, which is not disputed, derives from Article 67(1) of the FIFA Statutes (2013 edition) as it determines that:

“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”.

80. The jurisdiction of the CAS is further confirmed by the Order of Procedure duly signed by the parties.

81. It follows that the CAS has jurisdiction to decide on the present dispute.

VIII. APPLICABLE LAW

82. Article R58 of the CAS Code provides the following:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

83. The Sole Arbitrator notes that Article 66(2) of the FIFA Statutes stipulates the following:

“The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

84. The parties agreed to the application of the various statutes and regulations of FIFA, and in particular the FIFA Regulations. The Sole Arbitrator is therefore satisfied to accept the subsidiary application of Swiss law should the need arise to fill a possible gap in the various statutes and regulations of FIFA.

IX. ADMISSIBILITY

85. The Appeal was filed within the 21 days set by Article 67(1) of the FIFA Statutes (2013 edition). The Appeal complied with all other requirements of Articles R48 of the CAS Code, including the payment of the CAS Court Office fee.

86. River Plate submitted that the Appeal Brief had not been filed within the time limit as provided by Article R51 of the CAS Code.
87. River Plate considered that the decision of the President of the Appeals Arbitration Division of CAS was “arbitrary” since it was not substantiated in due form. River Plate noted that the issues related to the dispute were not complex. Further, in relation to festivities, River Plate noted that from the 3 January to the 13 January there was not any festivity. River Plate submitted that in accordance with Article R32 of the CAS Code, the CAS should reject and not take into account the extension of the term for official holidays. Therefore, there were no grounds for Bologna to be granted an extension of the applicable time limit. In relation to the decision taken by the President of the Appeals Division of CAS, River Plate noted that a general principle of law is that every decision must be founded. River Plate further submitted that Bologna filed its Appeal Brief after the deadline imposed by the CAS Court Office. River Plate noted that Bologna was notified on the 31 January 2014 that it had been granted an extension of the time limit for filing the Appeal Brief by five days, that that time limit started to run on 1 February 2014 and therefore expired on 5 February 2014, whereas Bologna submitted the Appeal Brief on 7 February 2014.
88. As provided in CAS Court Office correspondence, the Sole Arbitrator held that the Appeal Brief had been filed in a timely manner and it was thus admissible pursuant to R51 of the Code. The Sole Arbitrator explained that the time limit for filing the Appeal Brief ended on 7 February 2014 (and not on 4 or 5 February 2014) due to the fact that the time limit was extended by five days while three days of Bologna’s original time limit was still remaining when it was suspended on 10 January 2014 and resumed running on the 31 January 2014. Further, the Sole Arbitrator noted River Plate’s comments regarding the timing of festive holidays and the alleged lack of grounds to be granted an extension, however he also noted that the decision to grant an extension was made by the President of the Appeals Division of CAS in accordance with Article R32 of the CAS Code and that such decision is final on the parties and cannot be revisited by the Sole Arbitrator, even if he wanted to.
89. It follows that the Appeal is admissible.

X. MERITS OF THE APPEAL

A. The Main Issues

90. The Sole Arbitrator observes that the main issues to be resolved are:
- a. How much was the transfer fee for the Player and how much was the basic solidarity contribution?
 - b. Is River Plate entitled to a solidarity payment in accordance with the FIFA Regulations? If so, how much?
 - c. What sum should Bologna pay to River Plate and what should it retain for payment of the remaining solidarity contributions?
 - d. Should any interest be added?

a. *The amount of the transfer fee*

91. The Sole Arbitrator notes that in the Loan Agreement at Clause 3.1a the fee required to be paid by Bologna to River Plate to secure the permanent transfer of the Player was EUR 2.4m. However, pursuant to Clause 4.6 of the same agreement, River Plate would retain a right to a further payment should the Player be sold on by Bologna to a third club. River Plate would be entitled to 30% of any fee paid by such third club. This “sell on” fee is not uncommon in football and clearly had a significant value, as, pursuant to the Second Transfer Agreement, Bologna agreed to buy 50% of that “sell on” fee for EUR 1m. The Sole Arbitrator noted that 3 payments were made by Bologna pursuant to these agreements, an initial payment of EUR 400,000 followed by two further payments of EUR 500,000 each. From all 3 payments, Bologna retained 5% as the solidarity deductions, so retained EUR 70,000 in total. This is undisputed.
92. River Plate initiated proceedings before the FIFA PSC claiming the remaining EUR 2m. Having received EUR 1.4m (net of the solidarity retention), River Plate confirmed, in their view, the transfer fee was EUR 3.4m. Bologna, however disputed that EUR 1m of the EUR 3.4m was a transfer fee – rather it related to a separate transaction to acquire future rights from River Plate.
93. The Sole Arbitrator notes the wording of the Article 21 of the FIFA Regulations:
- “If a Professional is transferred before the expiry of his contract, any club that has contributed to his education and training shall receive a proportion of the compensation paid to his previous club (solidarity contributions). The provisions concerning solidarity contributions are set out in annex 5 of these Regulations”. [Emphasis added]*
94. In the Sole Arbitrator’s determination, both the EUR 2.4m and the EUR 1m sums represent “compensation” relating to the transfer of the Player to Bologna. If there was no “sell on” potential for River Plate, then they would have demanded more “up front” from Bologna. It is not uncommon for a selling club to want a certain price for a player, but to accept less initially, and a share of more, if the player turns out to be a success at the buying club and becomes a target for a third club. The wording of the FIFA Regulations is wide enough to cover all payments, whether up front or later ones. As such the Sole Arbitrator determines that the transfer fee is EUR 3.4m and that the basic amount of solidarity monies to be distributed would be EUR 170,000. The Sole Arbitrator notes there were no contractual arrangements for Bologna to pay this sum on top of the transfer fee, so it should be deducted from it.

b. *River Plate’s share of the solidarity monies*

95. The Sole Arbitrator noted that Bologna did not dispute that River Plate should be entitled to part of the solidarity monies, as it had trained the player prior to transferring him to Bologna. Bologna submitted that River Plate should only be entitled to 1.16% of the 5%. River Plate, on the other hand, sought to claim 1.80% of the 5%.

96. The Sole Arbitrator noted that the difference between the parties related to two issues: (a) was the Player trained by any club during the season of his 12th birthday and, if not, was the 5% to be reduced by 0.25% or was that sum to go to the AUF?; and (b) how long did the Player spend training with River Plate?

97. With regard to a), the Sole Arbitrator noted that the Player's passport records no club as having trained the Player during the season of his 12th birthday. Bologna sought to rely on the FIFA Commentary to Article 2, Annex 5 of the FIFA Regulations, which states as follows:

"If the career of the player cannot be traced back to the age of 12, the amount for any "missing years" will be distributed to the association of the country where the player was registered and shall be used for youth development programmes. The association is entitled to claim the solidarity contribution as soon as 18 months have elapsed since the registration of the player for the new club. It will have six months to do so, as this right will prescript two years after registration. However if the association has irrefutable evidence that one of its affiliated clubs that is entitled to solidarity contribution no longer exists, the solidarity contribution should be paid immediately to the association and not only after 18 months. If the association claims the solidarity contribution and an entitled club then appears, the claim of the association will obviously lose any effect".

In addition, Bologna relied upon the jurisprudence in CAS 2008/A/1751. The Sole Arbitrator notes on the other hand that River Plate questioned whether any clubs had trained the Player during his 12th year.

98. The Sole Arbitrator determined that such a dispute was beyond his scope of competence. A dispute clearly exists and River Plate should argue this before the FIFA DRC.

99. With regard to b), the Sole Arbitrator noted that neither Bologna or River Plate disputed the accuracy of the Player's Passport – it was more a difference of interpretation. Bologna submitted that River Plate only provided 850 days of training, whereas River Plate noted two periods of training that, when added together, exceeded this number of days.

100. Again, a dispute between the parties exists, which needs resolving by the competent body, the FIFA DRC. That said, it is undisputed by Bologna that at least 1.16% of the 5% belongs to River Plate. As such, the Sole Arbitrator determines that River Plate should be entitled to EUR 39,440 and Bologna should have retained EUR 130,560 of the EUR 170,000, to be distributed as determined by the FIFA DRC. The Sole Arbitrator notes that Bologna has already paid EUR 9,321 and EUR 10,399 to River Plate, so the balance of EUR 19,720 remains due to River Plate.

c. Total Sum due to River Plate

101. In addition, the balance of the transfer compensation of EUR 1.9m remains due from Bologna to River Plate. As such Bologna shall pay the sum of EUR 1,919,720 to River Plate and shall use the balance of the funds to settle the remaining solidarity payments relating to the Player, pursuant to the FIFA DRC proceedings.

d. Interest

102. The Sole Arbitrator noted that the FIFA PSC, in the Appealed Decision, only awarded interest as from 30 days from the date of the Appealed Decision. Further, whilst River Plate at the hearing requested interest on any sum awarded to it, the Sole Arbitrator notes that River Plate did not appeal against the Appealed Decision, so there is no scope to award interest from the payment dates set out in the Third Transfer Agreement.

B. Conclusion

103. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Sole Arbitrator:
- a. annuls the Appealed Decision and replaces it with this decision; and
 - b. orders Bologna to pay the sum of EUR 1,919,720 to River Plate.
104. Any further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 3 January 2014 by Bologna FC 1909 S.p.a against the Decision issued on 28 August 2013 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association is partially allowed.
2. The item 2 of the Decision issued on 28 August 2013 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association is modified as follows:

Bologna FC 1909 S.p.a shall pay the sum of EUR 1,919,720 (One Million, Nine Hundred and Nineteen Thousand Seven Hundred and Twenty Euros) to CA River Plate. [...]
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.